

SETTLEMENT AGREEMENT BETWEEN UNITED STATES
DEPARTMENT OF THE INTERIOR,
ON BEHALF OF THE NATIONAL PARK SERVICE
AND NTS/VIRGINIA DEVELOPMENT COMPANY

I. Introduction

The United States Department of the Interior, on behalf of the National Park Service ("DOI") and NTS/Virginia Development Company, a Virginia Corporation, ("NTS") (DOI and NTS are hereinafter collectively referred to as the "Parties") enter into this Settlement Agreement to resolve, without litigation, the United States' civil claims under the Park Service Resource Protection Act, 16 U.S.C. §§19 *et seq.* ("PSRPA") for injuries to park system resources resulting from NTS' ground disturbing activities on a protective easement owned by the United States which contained Civil War Earthworks of archeological and historic significance within the Wilderness Battlefield (NPS Tract 04-113) in Fredericksburg, Virginia on or about July 11, 2001 (the "Incident"). This Settlement Agreement does not constitute an admission of liability by NTS as to the aforementioned allegation. The Parties enter into this Settlement Agreement in order to avoid the risks and expense of litigation and in the belief that resolution of this dispute without litigation is in the best interests of both Parties.

II. Parties Bound

The provisions of this Settlement Agreement shall apply to and be binding upon NTS/Virginia Development Company and its successors and assigns and upon the United States Department of the Interior.

III. Definitions

Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in the PSRPA shall have the meaning assigned to them in that Act.

IV. Payment of Certain Costs and Damages

A. Within thirty (30) days after the effective date of this Settlement Agreement, NTS shall pay to DOI the sum of five thousand four hundred eighty-four (\$5,484.00) dollars to reimburse DOI for past damage assessment costs.

B. Within thirty (30) days after the effective date of this Settlement Agreement, NTS shall pay to DOI the sum of eighty-two thousand eight hundred sixty-seven (\$82,867.00) dollars. DOI shall use such funds to restore, replace, or acquire the equivalent of the park system resources injured as a result of the Incident and to monitor and study such resources.

C. Payment of the total amounts specified in Paragraphs A. and B above (\$88,351.00) shall be in the form of a check payable to the U. S. Department of the Interior and shall be sent directly to:

DOI Restoration Fund
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 West Mansfield Ave.
Lakewood, CO 80235

The following information must be included with the check:

| | |
|-----------------------|------------------------------------|
| Account Number: | 14X5198 (16 U.S.C. §19jj) |
| Name of Case: | Fawn-Lake II |
| Location of Site: | Fredericksburg/Spotsylvania NMP |
| Name of Paying Party: | NTS / Virginia Development Company |

A copy of the above-referenced check and any accompanying correspondence shall be sent to the following recipients:

Marcia F. Gittes, Esq.
Office of the Northeast Regional Solicitor
U.S. Department of the Interior
One Gateway Center - Suite 612
Newton, MA 02458-2881

Russell P. Smith, Superintendent

Fredericksburg and Spotsylvania NMP
120 Chatham Lane
Fredericksburg, VA 22405

Chief of Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resource Division
1425 New York Ave., NW
Room 13063
Washington, D.C. 20005

D. 1. If NTS fails to make any payment under this Section by the required due date, NTS shall be in violation of this Settlement Agreement and shall pay as a stipulated penalty, \$500.00 per day that such payment is late. The stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the United States. All payments under this Subparagraph D.1. shall be identified as "stipulated penalties" and shall be made to the United States by certified check made payable to "U.S. Department of Justice." Such payment shall reference this Settlement Agreement and NTS' name and address and be mailed to:

Financial Litigation Unit
Office of United States Attorney
Eastern District of Virginia - Richmond Division
600 E. Main Street - Suite 1800
Richmond, VA 23219

At the time of payment, NTS shall send notice of such payment to DOI and to the United States Department of Justice at the addresses set forth in Paragraph C of this Section. Penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified NTS of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

2. Payments made under this Paragraph D shall be in addition to any other remedies or sanctions available to the United States by virtue of NTS' failure to comply with the requirements of this Settlement Agreement. Notwithstanding any other provision of this Section, the United States may, in its own unreviewable discretion,

waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

E. NTS shall be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Settlement Agreement that is not timely paid.

V. Restoration Projects

A. DOI will use at least thirty thousand eight hundred and twenty-one dollars (\$30,821.00) from the total settlement funds to be paid by NTS pursuant to Section IV above to further develop and complete certain interpretive trail facilities along the Orange Plank Corridor in the Wilderness Battlefield; and

B. DOI intends to use a portion of the total settlement funds to be paid by NTS pursuant to Section IV above to define, through accepted archaeological methodology, the scope and condition of Wilderness Cemetery No. 2.

VI. Covenant Not to Sue by DOI

In consideration of the payments to be made by NTS, DOI covenants not to sue NTS, its successors, or its corporate officers or directors acting in their official capacity as such for (i) damages for injury to, destruction of, loss of, or loss of use of, park system resources arising from the Incident, including damage assessment costs associated with the Incident and (ii) other than as set forth in Section IV above, for costs, attorneys' fees, other fees, or expenses incurred by the United States to recover such resource damages in connection with the Incident. This covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by NTS of its obligations under Section IV of this Settlement Agreement.

VII. Covenant Not to Sue by NTS

NTS hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any of its departments, agencies or instrumentality of the NPS, or its employees, agents, or contractors, for any claim related to the Incident.

VIII. Public Notice Requirements

Final approval by the United States and the effectiveness of this Settlement Agreement (except with respect to Section X) are subject to public notice and comment for

a period of thirty days after publication of notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if public comments disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate. NTS agrees not to withdraw its consent to this Settlement Agreement pending consideration of public comments and approval of the Settlement Agreement by the United States. NPS shall notify NTS of such approval or non-approval expeditiously after the close of the applicable public comment period. Should the United States withdraw or withhold its approval, this Settlement Agreement shall be null and void except for Section X (Tolling of Statute of Limitations) which shall remain in full force and effect.

IX. Effective Date

The effective date of this Settlement Agreement (except with respect to Section X) shall be the date on which DOI issues written notice to NTS following the public comment period that the United States Department of Justice has approved the Settlement Agreement and that the comments received do not require modification of or DOI withdrawal from the Settlement Agreement.. Section X (Tolling of Statute of Limitations) of this Settlement Agreement shall be effective on the date that this Settlement Agreement has been signed by NTS.

X. Tolling of Statute of Limitations

A. Notwithstanding any other provision of this Settlement Agreement, the period commencing on March 10, 2006 and ending on the date 60 days after the Effective Date of this Settlement Agreement, or if the Settlement Agreement is not approved by the United States Department of Justice, 60 days after the date that DOI notifies NTS in writing that the United States Department of Justice has withheld or withdrawn its approval of this Settlement Agreement (hereinafter referred to as the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States against NTS pursuant to 16 U.S.C. §19jj arising from the Incident.

B. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period.

C. NTS shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage

of time during the Tolling Period.

D. This Section X does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any of the Parties, nor does this Section X constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable. The United States reserves the right to assert that no statute of limitations applies and that no other defense based upon the timeliness of commencing a civil action is applicable.

E. The Parties acknowledge that the tolling agreement embodied in this Section X may be extended for such period of time as the Parties agree to in writing.

F. This Section X does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against NTS or the date on which such a complaint could be filed.

G. NTS shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 120 days after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure relating to the Incident, regardless of any corporate or document retention policy to the contrary.

XI. Entire Agreement

This Settlement Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any party to this Settlement Agreement that is not set forth herein shall be valid or binding.

XII. Modification

The terms of this Settlement Agreement may be modified only by a subsequent written agreement by the Parties.

XIII. Signatories

Each undersigned representative of NTS and DOI certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates hereinafter written.

NTS/ Virginia Development Company,
a Virginia Corporation

2/17/2006
Date

By: Brian F. Lavin
President

United States Department of the Interior

2-21-06
Date

By: Anthony R. Conte
Northeast Regional Solicitor

U.S. Department of Justice

3/2/06
Date

Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division